No. 83-2076

(3)

In the Supreme Court of the United States

OCTOBER TERM, 1984

ROGER POLLARD, PETITIONER

v.

BOARD OF POLICE COMMISSIONERS AND
NORMAN A. CARON

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTIONS PRESENTED

1. Whether the Federal Election Campaign Act preempts a Missouri statute that prohibits Kansas City police officers from making contributions for "the promotion of * * * any political purpose whatever," insofar as that statute prohibits contributions to candidates for federal office.

2. Whether the Missouri statute violates the First Amendment.

3. Whether the Missouri statute violates the Equal Protection Clause of the Fourteenth Amendment.

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This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioner was a sergeant in the Kansas City, Missouri, Police Department. In July 1982, he contributed $1,000 out of his own funds to a political committee formed to promote the candidacy of an individual seeking the Democratic nomination for United States Representative from the Fifth District of Missouri. Petitioner's contribution was not solicited by or paid to a member of the Police Department and was not made on public premises or while petitioner was in uniform. Pet. App. A25, A27.

As a result of petitioner's contribution, and after a hearing, respondents — the Chief of Police and Board of Police Commissioners of Kansas City — terminated petitioner's

employment as a police officer. They relied on Mo. Ann. Stat. § 84.830 (Vernon 1971), which prohibits any political contributions by Kansas City police officers.[1] Petitioner then filed suit in the Circuit Court of Jackson County, Missouri, seeking reinstatement. Petitioner alleged that Section 84.830, insofar as it applied to federal elections, was preempted by the Federal Election Campaign Act of 1971 (FECA), 2 U.S.C. 431 *et seq.*, and that the enforcement of Section 84.830 against him violated both the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. The Circuit Court ruled in petitioner's favor and ordered him reinstated with back pay (Pet. App. A25-A40); the court upheld petitioner's preemption (*id.* at A30-A35) and First Amendment (*id.* at A35-A40) claims and did not reach his equal protection argument.

A divided Missouri Supreme Court reversed (Pet. App. A1-A18). It rejected petitioner's preemption claim on the ground that the FECA preempts only "the limited field of statutes imposing restrictions on candidates for federal office and their campaign committees" (*id.* at A6). The court also rejected petitioner's First Amendment claim on the ground that "the interest of the state in protecting a metropolitan police department from political domination

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[1]Mo. Ann. Stat. § 84.830 (Vernon 1971) provides:

> 1. * * * No officer or employee in the service of [the Kansas City] police department shall directly or indirectly give, pay, lend, or contribute any part of his salary or compensation or any money or other valuable thing to any person on account of, or to be applied to, the promotion of any political party, political club, or any political purpose whatever.
>
> * * * * *
>
> 7. Any officer or any employee of the police department of such cities who shall be found by the board to have violated any of the provisions of this section shall be discharged forthwith from said service. * * *

and influence is substantial, significant, important and compelling" (*id.* at A17). The court dismissed petitioner's equal protection claim as "lacking in merit" (*ibid.*).

Judges Welliver and Donnelly dissented. Judge Welliver stated that it was "questionable" whether the FECA preempts Section 84.830, but he rested his dissent on the ground that Section 84.830, while perhaps constitutional as applied to contributions to candidates for state and local office, violates the First Amendment as applied to federal elections (Pet. App. A18-A20). Judge Donnelly urged that Section 84.830 is preempted by the plain language of the FECA (Pet. App. A21-A22). He also stated that the First Amendment precludes the application of Section 84.830 to federal elections (Pet. App. A22-A24).

DISCUSSION

1. a. In our view, the Missouri Supreme Court erred in concluding that Section 84.830 is not preempted by the FECA. The FECA contains detailed and comprehensive limits on the amounts and sources of contributions to federal election campaigns, including the campaign of a person seeking a nomination to run for Congress (see 2 U.S.C. 431(1), (2), and (3)). Specifically, the FECA provides that "[n]o person shall make contributions * * * to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000" (2 U.S.C. 441a(a)(1)(A)). The FECA further prohibits corporations, labor organizations, foreign nationals, and government contractors from making any contributions to candidates for federal office (2 U.S.C. 441b, 441c, 441e). The FECA also regulates in detail the aggregate contributions that may be made by individuals to candidates and political committees (see 2 U.S.C. 441a(a)), the establishment of segregated funds for political purposes (commonly known as political action committees) by

corporations and labor unions (see 2 U.S.C. 441b(b)), and similar matters relating to the sources of funds for federal elections. Petitioner's contribution — a contribution by an individual of $1,000 — complied with these federal statutory provisions.

These restrictions on the sources and amounts of campaign contributions were, for the most part, enacted as part of the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 *et seq.*, which have been described as " 'by far the most comprehensive reform legislation [ever] passed by Congress concerning the election of the President, Vice-President, and members of Congress.' " *Buckley* v. *Valeo,* 424 U.S. 1, 7 (1976), quoting *Buckley* v. *Valeo,* 519 F.2d 821, 831 (D.C. Cir. 1975). When Congress enacted the 1974 Amendments, it included two broad preemption clauses. 2 U.S.C. 453 provides:

> The provisions of [the FECA], and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

The House committee that drafted this clause explained its intent in sweeping terms (H.R. Rep. 93-1239, 93d Cong., 2d Sess. 10 (1974)):

> It is the intent of the Committee to preempt all state and local laws.
>
> * * * It is the intent of the committee to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated. * * * The committee also feels that there can be no question with respect to preemption of local laws. Since the committee has provided that the Federal law supersede[s] and preempt[s] any law enacted by a State, the Federal law

> will also supersede and preempt any law enacted by a political subdivision of a State.

The 1974 Amendments placed the principal restrictions on campaign contributions and expenditures in Title 18, the Criminal Code. See 18 U.S.C. (Supp. IV 1974) 608 *et seq.* The second preemption clause included in the 1974 Amendments was specifically applicable to these restrictions (Pub. L. No. 93-443, § 104(a), 88 Stat. 1272 (codified at 18 U.S.C. 591 note)):

> The provisions of chapter 29 of title 18, United States Code, relating to elections and political activities, supersede and preempt any provision of State law with respect to election to Federal office.

The House committee explained this preemption provision as follows (H.R. Rep. 93-1239, *supra,* at 10-11):

> [This] preemption provision was added * * * to make it clear that the Federal law is intended to be the sole source of criminal sanctions for offenses involving political activities in connection with Federal elections. The committee wants to avoid even the possibility of an argument that the preemption provision contained in [2 U.S.C. 453] referring to "provisions of this Act" [2] does not include the provisions of title 18 amended by * * * this legislation. This clarification is most important because all of the actual limitations on contributions and expenditures, together with the sanctions for violation of such limitations, are included

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[2]The report actually refers to "the preemption provision contained in the 1971 Act referring to 'provisions of this Act'* * *." Both the context and the fact that the quoted language does not appear in the preemption provision of the unamended 1971 Act (see 2 U.S.C. (Supp. II 1972) 453, quoted at page 15 note 7, *infra*), make it apparent that the committee was referring to its proposed amendment to the 1971 Act — the language that subsequently was enacted as 2 U.S.C. 453.

in the criminal code provisions of title 18 amended by this legislation.

The conference committee report on the 1974 Amendments then explained the precise extent to which Congress intended the statute it was amending to preempt state law (H.R. Rep. 93-1438, 93d Cong., 2d Sess. 69 (1974) (emphasis added)):

> The provisions of [the 1974 Amendments] make it clear that the Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, *the sources of campaign funds used in Federal races,* the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights to prohibit false registration, voting fraud, theft of ballots, and similar offenses under State law.[3]

b. The plain language and legislative history of the 1974 Amendments demonstrate that Mo. Ann. Stat. § 84.830, insofar as it applies to federal election campaigns, is preempted by federal law. Section 84.830 regulates the contributions that may be made to federal campaigns; in the words of the conference report, it "relat[es] to limitations on * * * the sources of campaign funds used in Federal races." Congress not only legislated comprehensively in this area; it explicitly stated its intention to occupy this field in strong and unequivocal terms. Indeed, Congress enacted a second, arguably redundant preemption clause for the express purpose of precluding "even the possibility of an

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[3]This passage from the conference report was addressed to the preemption provision that Congress added for the purpose of establishing that the limitations on contributions contained in the 1974 Amendments occupied the field. The passage from the conference report quoted by the court below (see Pet. App. A7) addressed the other preemption clause and accordingly made no mention of limitations on contributions or on the sources of funding.

argument" (H.R. Rep. 93-1239, *supra,* at 10-11) that state law might supplement the limitations on contributions and expenditures in connection with federal campaigns that were included in the 1974 Amendments.

In addition, the Federal Election Commission, the expert administrative body established by Congress to implement the 1974 Amendments (see, *e.g.,* 2 U.S.C. 437c(b), 437d(e), 437f; *FEC* v. *Democratic Senatorial Campaign Committee,* 454 U.S. 27, 37 (1981)) has issued a regulation providing that "Federal law supersedes State law concerning the * * * [l]imitation on contributions and expenditures regarding Federal candidates and political committees." 11 C.F.R. 108.7(b)(3). In response to the Solicitor General's inquiry concerning the FEC's views on the preemption question in this case, the FEC, on January 23, 1985, concluded by a vote of 6-0 that the FECA preempts Mo. Ann. Stat. § 84.830 to the extent that that statute applies to contributions made to influence an election to federal office. In sum, the plain language of the FECA, emphatic statements in the legislative history, and the considered judgment of the agency charged with enforcing the statute all support the conclusion that Section 84.830 is preempted by federal law.

c. While certain arguments can be advanced in support of the Missouri Supreme Court's contrary conclusion, they are not, in our view, sufficient.

i. First, petitioner was not subjected to a criminal sanction; the committee reports we quoted above stated that "Federal law is intended to be the sole source of criminal sanctions" (H.R. Rep. 93-1239, *supra,* at 10) and that "Federal law occupies the field with respect to criminal sanctions relating to * * * the sources of campaign funds used in Federal races" (H.R. Rep. 93-1438, *supra,* at 69). But the language of the preemption provisions of the 1974 Amendments is not limited to state criminal laws: both of those provisions broadly "supersede and preempt *any* provision

of State law with respect to election to Federal office" (emphasis added). Moreover, the FECA provides for an integrated scheme of civil and criminal enforcement (see 2 U.S.C. 437g) that Congress has described as "a delicate balance designed to effectively prevent and redress violations" (H.R. Rep. 94-917, 94th Cong., 2d Sess. 4 (1976)) and has carefully adjusted from time to time. See Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, §§ 107(b), 109, 90 Stat. 482-483; H.R. Rep. 94-917, *supra,* at 3-4; S. Rep. 94-677, 94th Cong., 2d Sess. 7-8 (1976); H.R. Rep. 94-1057, 94th Cong., 2d Sess. 45-50 (1976). Congress conferred on the FEC the power to bring civil actions to enforce the FECA (2 U.S.C. 437d(a)(6)) and explicitly stated that "the power of the Commission to initiate such civil actions * * * shall be the exclusive civil remedy for the enforcement of the provisions of this Act" (2 U.S.C. 437d(e)). In these circumstances, it is most unlikely that Congress intended to preempt only state criminal laws and to allow state regulation so long as the state imposed noncriminal penalties.[4]

ii. The Missouri Supreme Court suggested that Section 84.830 is not preempted by the FECA because its purpose is to eradicate a different evil. The purpose of Section 84.830, the court found, was to remedy a situation in which ostensibly voluntary political contributions were in fact extorted

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[4]Similarly, it is immaterial that the limitations on contributions are no longer contained in Title 18 of the United States Code but have been transferred to Title 2 (see Pub. L. No. 94-283, §§ 112(2), 201(a), 90 Stat. 486, 496). The knowing and willful violation of these restrictions remains a crime (see 2 U.S.C. 437g(d)), and we know of no suggestion in the legislative history of the statute effecting the transfer that Congress intended the transfer to undermine the preemptive effect of these provisions. Indeed, the legislative history of this statute emphasizes the carefully integrated and balanced nature of the enforcement scheme. See, *e.g.,* H.R. Rep. 94-917, *supra,* at 3-4. This is evidence that Congress did not intend that scheme to be supplemented or disrupted by state remedies. See *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218 (1947).

from police officers, and in which the police force was subject to political influence because police officers were chosen for their loyalty to the governing political machine. See Pet. App. A3-A4, A28-A29; see also Br. in Opp. 2-4. By contrast, Congress, in enacting the FECA and its amendments, was concerned not with the possibility of extortion or political influence among those who make political contributions but with the "real or imagined coercive influence of large financial contributions" on the *recipients* of contributions. See *Buckley,* 424 U.S. at 25.

The reasoning of the Missouri Supreme Court that Section 84.830 is not preempted because it is addressed to concerns that are distinctively local and different from those of the federal regulatory scheme might have some force if petitioner's contention were that the FECA *implicitly* preempted Section 84.830. Cf. *San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236, 241-244 (1959). But in this case it is unnecessary to determine whether preemption can be inferred from the nature and objectives of the federal regulatory scheme; the FECA explicitly — indeed, emphatically — preempts state regulation in the area of limitations on contributions to federal campaigns. See *Aloha Airlines* v. *Director of Taxation,* No. 82-585 (Nov. 1, 1983), slip op. 4-5 & n.5 (rules for discerning congressional intent developed in cases involving the implicit preemption of state statutes "have little application when a court confronts a federal statute * * * that explicitly preempts state laws"). The broad preemption clauses of the 1974 Amendments, and the language in the conference report expressing an intent to "occup[y] the field with respect to * * * the sources of campaign funds used in Federal races" — especially when combined with the FEC's interpretation of the statute it is charged with administering — leave no room for the contention that the states may

legislate in this area in order to promote distinctively local concerns not addressed by the federal legislation.[5]

In addition, the reasoning of the Missouri Supreme Court appears to have no limiting principle. A state might legitimately assert a special interest in preventing the adverse effects and appearances potentially caused by the political contributions not just of state and local government employees but of other classes of citizens as well — for example, registered lobbyists (see page 15 note 8, *infra*), individuals employed in industries regulated by the state, and professionals, such as lawyers, licensed by the state. Under the reasoning of the Missouri Supreme Court, a state would apparently be able to limit the political contributions of each of these groups. The result would be that, insofar as a substantial proportion of the citizens of such a state were concerned, Congress's deliberate decision to allow federal campaign contributions of up to $1,000 would effectively be nullified. For this reason, the conclusion that Section 84.830 is preempted is supported not just by the language and legislative history of the FECA and the FEC's interpretation but by the need to maintain the integrity of the congressional scheme.

iii. Finally, certain passages in another portion of the legislative history of the Federal Election Campaign Act Amendments of 1974 persuaded the Missouri Supreme Court that Section 84.830 is not preempted. See Pet. App. A7-A10. The Eighth Circuit, in considering a challenge to Section 84.830 brought by another Kansas City police

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[5]Moreover, nothing in the FECA prevents a state from directly attacking the problems with which Section 84.830 is said to be concerned. A state may of course directly outlaw extortion and prohibit the use of political criteria in the selection of police officers. Section 84.830 is preempted solely because it addresses these problems by sweeping means that infringe on an area — the regulation of contributions to federal election campaigns — that Congress has explicitly occupied.

officer who was discharged for contributing to a federal election campaign, was persuaded by the same passages. See *Reeder* v. *Kansas City Board of Police Commissioners,* 733 F.2d 543, 545-546 (1984) (reprinted at Br. in Opp. A1-A11).

At the same time that Congress amended the FECA in 1974, it also amended some of the provisions of the Hatch Act. Before 1974, the Hatch Act, in addition to prohibiting certain political activities by federal employees (see generally *CSC* v. *National Association of Letter Carriers,* 413 U.S. 548 (1973)), also prohibited certain state and local employees whose principal employment was in programs funded by the federal government from "tak[ing] an active part in political management or in political campaigns." 5 U.S.C. (1970 ed.) 1502(a)(3). In 1974, in the same statute in which it amended the FECA, Congress amended this provision of the Hatch Act to specify that such state and local employees were prohibited only from "be[ing] a candidate for elective office." Pub. L. No. 93-443, § 401(a), 88 Stat. 1290; see 5 U.S.C. 1502(a)(3). The House report on this amendment explains it as follows (H.R. Rep. 93-1239, *supra,* at 11):

> The amendment[] * * * would remove from Federal law the prohibition against voluntary partisan political activity by State and local employees employed in programs funded in whole or in part from Federal loans or grants. Activities such as driving voters to the polls or attending a political convention as a delegate would no longer be prohibited by Federal law. The regulation of political activities of State and local employees would be left largely to the States. Federal law would, however, continue to prohibit a State or local officer or employee from using his official authority or influence to interfere with or affect the result of

an election and prohibit him from coercing, commanding, or advising another State or local officer or employee to pay, lend, or contribute anything of value to any person for political purposes. Nothing in existing law or in the amendment made by this section prevents a State or local officer or employee from making a voluntary political contribution.

The conference report, on which the court below relied (Pet. App. A9), contains the following explanation (H.R. Rep. 93-1438, *supra,* at 102 (emphasis added)):

> It is the intent of the conferees that any State law regulating the political activities of State and local officers and employees is not preempted or superseded *by the amendments to title 5, United States Code, made by this legislation.*

When the conference report was submitted to the Senate, Senators Stevens and Cannon engaged in the following colloquy, which was quoted at length and heavily relied on by the court below (see Pet. App. A8-A9; 120 Cong. Rec. 34386 (1974)):

> Mr. STEVENS. Mr. President, just 1 minute. I should like to clarify something, if I may, with the manager of the bill.
>
> A provision of this bill amends section 1502 of title 5 relating to the activity of State or local employees in Federal campaigns. Specifically, it takes out subsection (a)(3), which prohibits a State or local officer or employee from taking an active part in political management or political campaigns, and substitutes for that a prohibition from being a candidate for Federal office.
>
> It is my understanding, and I should like to ask the manager of the bill, my friend from Nevada (Mr. CANNON), if he agrees that this means that State laws

which prohibit a State employee, or local laws which prohibit a local employee, from engaging in Federal campaign activities and Federal campaigns, are still valid?

* * * * *

I think it is quite important, because many of our States have the so-called little Hatch Act, and it was not our intent to repeal those "little Hatch Acts," or to modify them, but to take it out of the Federal law so that Federal law does not prohibit those activities, leaving it up to the State to do so.

Mr. CANNON. The Senator is absolutely correct.
* * *

* * * It was the intent of the conferees that any State law regulating the political activity of State or local officers or employees is not preempted [or] superseded. We did want to make it clear that if a State has not prohibited those kinds of activities, it would be permissible in Federal elections.

This would get away from the situation in which the Federal Government gives the State funds toward many different programs, and some of those employees have been fearful that they could not participate in Federal campaigns. This would eliminate that problem.

Mr. STEVENS. It is up to the State to determine the extent to which they may participate in the Federal elections?

Mr. CANNON. The Senator is right. The States make that determination.

All of this legislative history, however, was explicitly intended by the committees and Senator Stevens to illuminate the meaning of the 1974 Amendments to the Hatch

Act — not to narrow the preemption clauses of the amendments to the FECA. The statement of the conference committee, Senator Stevens's inquiry, and Senator Cannon's reference to "the situation in which the Federal Government gives the State funds" were by their terms confined to the Hatch Act amendments; they made no reference to any other provision, and there is no evidence that either the conference committee or Senators Stevens and Cannon believed that they were explaining the meaning of the preemption provisions of the quite distinct FECA amendments that happened to be included in the same statute.

In addition, it seems clear that the political "activities" to which Senator Stevens and the committee report referred when they emphasized that states could continue to regulate their employees' political activities do not include voluntary campaign contributions. Such contributions have never been a subject regulated by the Hatch Act; the Hatch Act has not been construed to prohibit the making of such contributions. See *Letter Carriers,* 413 U.S. at 577 n.11; 5 C.F.R. 733.111(a)(8).[6] Indeed, the House committee report that we quoted above stated that "[n]othing in existing law or in the amendment [to the Hatch Act] made by this section prevents a State or local officer or employee from making a voluntary political contribution." This statement reveals that Congress did not consider the making of voluntary campaign contributions to be among the forms of political activity regulated by the Hatch Act; rather, Congress apparently viewed that as a subject regulated by the FECA.[7]

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[6]In this case, the trial court stated that it had reviewed the "little Hatch Acts" of all the states and that, apart from Section 84.830, only the laws of Louisiana prohibit voluntary campaign contributions. Pet. App. A33-A34.

[7]Prior to the 1974 Amendments, the preemption clause of the FECA was as follows (2 U.S.C. (Supp. II 1972) 453):

2. While it seems reasonably clear that the Missouri Supreme Court's decision is in error, it is less clear whether the decision warrants this Court's review. We are aware of no evidence suggesting that restrictions comparable to Section 84.830 are common.[8] The trial court in this case stated that it had "reviewed the little Hatch Acts of the fifty states"

(a) Nothing in this Act shall be deemed to invalidate or make inapplicable any provision of any State law, except where compliance with such provision of law would result in a violation of a provision of this Act.

(b) Notwithstanding subsection (a) of this section, no provision of State Law shall be construed to prohibit any person from taking any action authorized by this Act or from making any expenditure * * * which he could lawfully make under this Act.

It might be argued that if Congress intended the 1974 Amendments to preempt state statutes like Section 84.830, it would have continued in effect the language of subsection (b) and expressly provided that no state law shall prohibit any person from making any contribution he could lawfully make under the FECA.

In view of the sweeping preemption clauses that Congress *did* enact in 1974, however, its failure to use language that would deal precisely with measures like Section 84.830 is of little significance. The legislative history of the preemption provisions of the 1974 Amendments precludes any suggestion that Congress meant to expand the permissible scope of state regulation. Congress manifestly had precisely the opposite intent. Congress evidently believed that the broad preemption clauses of the 1974 Amendments would subsume the much narrower preemption provision of the unamended 1971 Act. (We note in addition that when Congress enacted 2 U.S.C. (Supp. II 1972) 453(b), it apparently was concerned with expenditures by and on behalf of candidates, not by individuals expressing their support for candidates. See 117 Cong. Rec. 43396-43397 (1971).)

[8]The FEC has been empowered to issue advisory opinions on the request of office holders, candidates, and political committees since 1974 (see 2 U.S.C. (Supp. IV 1974) 437f) and, since 1980, in response to any proper request (see 2 U.S.C. 437f). The FEC has issued only one advisory opinion dealing with a question similar to that presented by this case. See AO 1978-66 (expressing the view that the FECA preempts a California statute that forbids candidates from accepting contributions from registered lobbyists).

(Pet. App. A33) and that except for the Louisiana law (see *Bruno* v. *Garsaud*, 594 F.2d 1062 (5th Cir. 1969)), and Section 84.830 (which applies only to the Kansas City Police Department) none of these statutes prohibits voluntary campaign contributions. Furthermore, there is no conflict in the circuits on the question whether a state may prohibit its employees, or a certain category of employees, from making contributions to a federal election campaign.

On the other hand, this may be an area in which there is a particular need for the Court to clarify the law at a relatively early stage. Prohibitions on contributions to federal campaigns by state or local employees — or by other individuals or entities that the state may assert a special interest in regulating (see page 10, *supra*) — might be found not only in the state statutes reviewed by the trial court in this case but in municipal ordinances and administrative directives. See, *e.g.*, *Mancuso* v. *Taft*, 476 F.2d 187, 189 n.1 (1st Cir. 1973); *Hobbs* v. *Thompson*, 448 F.2d 456, 457 (5th Cir. 1971). An individual subject to such a prohibition would be faced with sharply divergent assessments of its legality from authoritative bodies — the Missouri Supreme Court and the Eighth Circuit have held such a restriction lawful, but the FEC has taken the position that such a prohibition is preempted by the FECA. See also pages 16-17 note 9, *infra*. Limitations on campaign contributions implicate the First Amendment right to freedom of speech (see *Buckley*, 424 U.S. at 12-38), and in this sensitive area there is much to be said for not leaving individuals in a state of such uncertainty.[9] It would

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[9]Petitioner contends (Pet. 5-15) that Section 84.830, at least as applied to contributions to federal election campaigns, violates the First Amendment and the Equal Protection Clause. (Both dissenting judges below noted that the resolution of the First Amendment issue raised by petitioner might differ depending on whether Section 84.830 was applied to federal elections or only to state and local elections. See Pet. App. A20, A24.) Because, as we have explained, Congress has occupied

therefore not be inappropriate for the Court to grant review in this case.[10]

Respectfully submitted.

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the field of regulating the permissible sources of contributions to federal campaigns and has not seen fit to enact a total prohibition on campaign contributions comparable to Section 84.830, there is no need for the Court to address these constitutional issues in this case.

While there is no clear conflict in the circuits on the First Amendment issue raised by petitioners, dictum in the Fifth Circuit's decision in *Bruno* v. *Garsaud, supra,* is inconsistent with both the decision below and the Eighth Circuit's decision in *Reeder* v. *Kansas City Board of Police Commissioners, supra.* In *Bruno,* the Fifth Circuit, in considering the provisions of Louisiana law that prohibit political contributions by state employees, stated that it had "strong doubts that [that prohibition] could constitutionally be enforced to prohibit Louisiana classified employees, at least when acting as private citizens without any fanfare or publicity, from making contributions to a political candidate or party. * * * Insofar as the statute does purport to proscribe altogether this constitutionally protected conduct, it sweeps too broadly." 594 F.2d at 1064. See also *Wachsman* v. *City of Dallas,* 704 F.2d 160, 174 (5th Cir.), cert. denied, 464 U.S. 1012 (1983).

[10]We note that an appeal of the judgment of the Missouri Supreme Court apparently would have been within this Court's mandatory jurisdiction. 28 U.S.C. 1257(2).